

**DEPARTMENT OF STATE REVENUE**

**FIRST SUPPLEMENTAL  
LETTER OF FINDINGS NUMBER: 93-0933 CS  
CONTROLLED SUBSTANCE EXCISE TAX  
FOR TAX PERIOD: OCTOBER 19, 1993**

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**ISSUE**

**I. Controlled Substance Excise Tax – Imposition**

**Authority:** IC 6-7-3-5; IC 6-7-3-6; IC 6-8.1-5-1

Taxpayer protests the imposition of the controlled substance excise tax.

**STATEMENT OF FACTS**

Taxpayer was arrested for possession of marijuana on October 19, 1993. Taxpayer was assessed the controlled substance excise tax on October 20, 1993. Taxpayer protested the tax assessment and requested an administrative hearing. Neither taxpayer nor his representative appeared at the first administrative hearing. A Letter of Findings was written denying taxpayer's protest. Taxpayer requested a rehearing which was granted on March 19, 1999. Additional relevant facts will be provided below, as necessary.

**I. Controlled Substance Excise Tax – Imposition**

## **DISCUSSION**

Indiana Code Section 6-7-3-5 states:  
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PAGE 2

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed, or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Pursuant to Indiana Code Section 6-7-3-6:

AThe amount of the controlled substance excise tax is determined by:

- (1) the weight of the controlled substance. . .≡

Taxpayer was arrested and the controlled substance excise tax was assessed based on 7,899.30 grams of marijuana.

Taxpayer protested the assessment on several constitutional grounds. The taxpayer argued the marijuana was found pursuant to an illegal search and seizure and the assessment constituted a double jeopardy. The taxpayer also argued marijuana does not fit the description of a Schedule I Controlled Substance and the tax assessment should not constitute a jeopardy.

The administrative hearing is designed to address Indiana law and apply it to facts presented in particular cases. The Department applies Indiana law as it effects the taxpayer. The Department will not second-guess the legislature or the laws passed by the legislature.

Pursuant to IC 6-8.1-5-1(b), “The notice of proposed assessment is prima facie evidence that the department’s claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” Taxpayer has not presented any proof the marijuana was not possessed by him. Therefore, the taxpayer is denied.

## **FINDING**

Taxpayer’s protest is denied.